

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ESTATE OF NICKOLAS MICHAEL
PETERS, by the Personal
Representative CARL MICHAEL
PETERS; and JAYNI MARIE PETERS
and CARL MICHAEL PETERS,
individually and their marital
community,

Plaintiffs,

v.

SNOHOMISH COUNTY as a sub-
division of the STATE of
WASHINGTON; SNOHOMISH
COUNTY DEPUTY SHERIFF
ARTHUR J. WALLIN; and CERTAIN
UNKNOWN SNOHOMISH COUNTY
DEPUTY SHERIFFS JOHN & JANE
DOES 1 – 3,

Defendants.

No. 2:19-cv-00873-TSZ

**STIPULATION FOR
DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION (ESI) AND
ORDER**

The parties hereby stipulate to the following provisions regarding the discovery of electronically stored information (ESI) in this matter:

A. General Principles

1. An attorney's zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties in litigation to cooperate

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1 in facilitating and reasonably limiting discovery requests and responses raises litigation costs and
2 contributes to the risk of sanctions.

3 2. The proportionality standard set forth in Fed. R. Civ. P. 26(b) (2) (B) must be applied in
4 each case when formulating a discovery plan. To further the application of the proportionality
5 standard in discovery, requests for production of ESI and related responses should be reasonably
6 targeted, clear, and as specific as possible.

7 **B. ESI Disclosures**

8 Within 30 days after the Rule 26(f) conference, or at a later time if agreed to by the parties,
9 each party shall disclose:

10 1. Custodians. The five custodians most likely to have discoverable ESI in their possession,
11 custody or control. The custodians shall be identified by name, title, connection to the instant
12 litigation, and the type of the information under his/her control.

13 2. Non-custodial Data Sources. A list of non-custodial data sources (*e.g.*, shared drives,
14 servers, data bases, etc.), if any, likely to contain discoverable ESI.

15 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to contain
16 discoverable ESI (*e.g.* third-party email and/or mobile device providers, “cloud” storage, etc.) and,
17 for each such source, the extent to which a party is (or is not) able to preserve information stored
18 in the third-party data source.

19 4. Manual Data. Drawings, illustrations, photographs, images, documents and ESI of a
20 party which are not subject to effective computer word searches are still subject to the discovery
21 requests from the propounding party and manual searches by the responding party.

22 5. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI (by
23 type, date, custodian, electronic system or other criteria sufficient to specifically identify the data

1 source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b) (2) (B). [Section
2 (C) (2) below sets forth data sources and ESI which are not required to be preserved by the parties.
3 Those data sources and ESI do not need to be included on this list.]

4 **C. Preservation of ESI**

5 The parties acknowledge that they have a common law obligation to take reasonable and
6 proportional steps to preserve discoverable information in the party's possession, custody or
7 control. With respect to preservation of ESI, the parties agree as follows:

8 1. Absent a showing of good cause by the requesting party, the parties shall not be required
9 to modify the procedures used by them in the ordinary course of business to back-up and archive
10 data; provided, however, that the parties shall preserve all discoverable ESI in their possession,
11 custody or control. All parties shall supplement their disclosures in accordance with Rule 26(e)
12 with discoverable ESI responsive to a particular discovery request or mandatory disclosure where
13 that data is located, discovered or created after a disclosure or response is made (unless excluded
14 under (C) (2) or (D) (1)-(2) below).

15 2. Absent a showing of good cause by the requesting party, the following categories of ESI
16 need not be preserved:

- 17 a. Deleted, slack, fragmented, or other data only accessible by forensics;
- 18 b. Random access memory (RAM), temporary files, or other ephemeral data that are
19 difficult to preserve without disabling the operating system;
- 20 c. On-line access data such as temporary internet files, history, cache, cookies, and
21 the like;
- 22 d. Data in metadata fields that are frequently updated automatically, such as last-
23 opened dates (see Section (E) (3));

- 1 e. Back-up data that are substantially duplicative of data that are more accessible
2 elsewhere;
- 3 f. Server, system or network logs;
- 4 g. Data remaining from systems no longer in use that is unintelligible on the systems
5 in use; and,
- 6 h. Electronic data (e.g. email, calendars, contact data, and notes) sent to or from
7 mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices), *provided* that
8 a copy of all such electronic data is routinely saved elsewhere (such as on a server,
9 laptop, desktop computer, or “cloud “storage) and will be produced if responsive.

10 **D. Privilege**

11 1. With respect to privileged or work-product ESI and documents which are generated by
12 Plaintiffs’ counsel before the filing of the complaint and which are generated by the plaintiffs’ and
13 defendants’ counsel after the filing of the complaint, Plaintiffs’ counsel and the defense counsel
14 are not required to include any such information in privilege logs.

15 2. Activities undertaken in compliance with the duty to preserve information are
16 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

17 3. FRCP 26 (b) (5) (A) shall be followed for all information withheld by a party
18 claiming privilege which was otherwise discoverable subject to the D. 1. exception above.

19 4. Information produced in discovery that is protected as privileged or work product shall
20 be immediately returned to the producing party, and its production shall not constitute a waiver of
21 such protection, if: (i) such information appears on its face to have been inadvertently produced or
22 (ii) the producing party provides notice within 15 days of discovery by the producing party of the
23 inadvertent production.

1 5. The parties agree that privilege logs shall be provided 30 days after the date agreed
2 upon for final production in this matter. The privilege log shall include a unique identification
3 number for each document and the basis for the claim (attorney-client privileged and/or work
4 product protection). For ESI, the privilege log may be generated from available metadata,
5 including author/recipient or to/from/cc/bcc names; the subject matter or title and date created
6 subject to the D. 1. exception above. Should the available metadata provide insufficient
7 information for the purpose of evaluation of the privilege claim asserted, the receiving party may
8 request additional information consistent with the Federal Rules of Civil Procedure.

9 **E. ESI Discovery Procedures**

10 1. On-site inspection of electronic media. Such an inspection shall not be permitted
11 absent a demonstration by the requesting party of specific need and good cause or by agreement
12 of the parties.

13 2. Search methodology. The parties shall attempt to reach agreement on appropriate
14 search terms, or an appropriate computer- or technology-aided methodology, before any such
15 effort is undertaken. Each party will suggest the initial search terms to be used given they have
16 more information regarding their data which may then be modified. The parties shall continue to
17 cooperate in revising the appropriateness of the search terms or computer- or technology-aided
18 methodology.

19 If the parties are not able to reach agreement on search terms, then:

20 a. A producing party shall disclose what search terms, if any, were used to locate ESI
21 likely to contain discoverable information and the identity of the data locations
22
23

1 searched. If search terms were not used, the producing party shall disclose the
2 methodology used to locate ESI likely to contain discoverable information;

3 b. If search terms were used to locate ESI likely to contain discoverable information,
4 a requesting party is entitled to no more than 5 additional queries to be used in
5 connection with further electronic searches absent a showing of good cause or
6 agreement of the parties. The parties shall confer in good faith on the 5 additional
7 queries. Focused terms and queries, rather than overbroad ones (e.g., product and
8 company names), should be employed;

9 c. Absent a showing of good cause, queries returning more than a proportional number
10 of search hits are presumed to be overbroad and subject to meet and confer with the
11 understanding that not all custodians or queries will have the same proportionality
12 standard; and,

13 d. The producing party shall search both non-custodial data sources and ESI
14 maintained by the custodians identified above.

15 3. Format. The parties agree that ESI will be produced to the requesting party
16 generally in .pdf format with searchable text unless a specific request is made by a party to produce
17 documents or other discoverable materials in original native format and/or .pdf's with the load file
18 fields listed in section 5 below, in a format to be decided between the parties. Unless otherwise
19 agreed to by the parties, files that are not easily converted to image format, such as spreadsheet,
20 database, audio, video and drawing files, should be produced in native format. Plaintiff's medical
21 records, tax returns, school records, and other records kept and produced by third parties will be
22 produced in the format received by plaintiff. Each document image shall be named with a unique
23

1 Bates Number (e.g., the unique Bates Number of the page of the document in question, followed
2 by its file extension). The parties agree to exchange format of production specifications.

3 4. De-duplication. The parties may de-duplicate their ESI production across custodial
4 and non-custodial data sources.

5 5. Load File Fields. The parties agree that the following fields will be provided in the
6 load file reflecting the conversion of the native files to an image when requested by a party:

7 a. Begin doc; end doc; begin attachment; end attachment; document type;
8 custodian and duplicate custodians; hash value;

9 b. The metadata from the underlying native file will also be extracted and
10 produced within the load file for these additional fields: author or from;
11 recipient/to, cc and bcc, title or subject; file name and size; original file path;
12 date and time created; date and time modified or received; page count;
13 company; last modified by; printed; and number of revisions; and,

14 c. If appropriate any protective order designations will also be identified
15 within the load file.

16 6. Hard-Copy Documents. For documents maintained by a party only as hard-copy
17 documents which are converted to an electronic format for discovery, the production of the hard-
18 copy documents shall include a load file if required above with document breaks and sets forth the
19 Custodian or Source associated with each produced document. Hard-copy documents shall be
20 scanned using Optical Character Recognition technology and searchable ASCII text files shall be
21 produced (or Unicode text format if the text is in a foreign language), unless the producing party
22 can show that the cost would outweigh the usefulness of scanning (for example, when the condition
23 of the paper is not conducive to scanning and will not result in accurate or reasonably

1 useable/searchable ESI). Each file shall be named with a unique Bates Number (e.g. the Unique
2 Bates Number of the first page of the corresponding production version of the document followed
3 by its file extension).

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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6 Dated October 3, 2019

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15 Dated October 3, 2019

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1 Dated October 3, 2019

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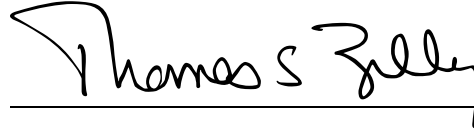
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1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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3 DATED: October 7, 2019.

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5 Thomas S. Zilly
6 United States District Judge

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8 Presented by:

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